

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: 3/11/14

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CARLOS C. CHARLES,	:	
	:	
Petitioner,	:	13 Civ. 7389 (JPO) (HBP)
	:	
-against-	:	REPORT AND
	:	<u>RECOMMENDATION</u>
WARDEN H.L. HUFFORD,	:	
	:	
Respondent.	:	

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PITMAN, United States Magistrate Judge:

TO THE HONORABLE J. PAUL OETKEN, United States
District Judge,

The petitioner commenced this action on October 17, 2013 by filing a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Petitioner's only claim is that the United States Bureau of Prisons ("BOP") has miscalculated his sentence and improperly denied him credit against his sentence for an eight-month period from October 24, 1996 through June 16, 1997 during which he was held in state custody.

On January 14, 2014, I received a letter from counsel for Respondent advising that after learning of petitioner's claim, the BOP contacted the sentencing judge, the Honorable Thomas J. McAvoy, United States District Judge, to determine

whether Judge McAvoy intended petitioner's federal sentence to run concurrently with the eight-month period cited by Petitioner. The letter went on to state that Judge McAvoy had advised the BOP that he did intend the two periods to run concurrently and that the BOP had recalculated Petitioner's sentence to give him credit for the eight-month period in issue.¹

On January 15, 2014, I issued an Order advising Petitioner that, as a result of the BOP's recalculation of his sentence, his petition now appeared to be moot and directing him to contact my chambers by February 21, 2014 if he felt that any part of his claim remained alive (Docket Item 11). A copy of my January 15 Order was mailed to Mr. Charles at his FCI Otisville address and it has not been returned as undeliverable.

To date, plaintiff has not contacted my chambers or the Court in any way. Accordingly, I respectfully recommend mea sponte that the petition be action be dismissed as moot.

OBJECTIONS

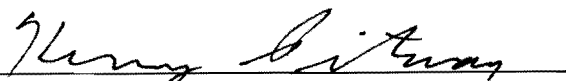
Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from the date of this Report and Recommendation to file

¹A copy of this letter has been docketed in this matter as an Exhibit to Docket Item 11.

written objections. See also Fed. R. Civ. P. 6(a) and 6(e). Such objections (and responses thereto) shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable J. Paul Oetken, United States District Judge, Room 2101, 40 Foley Square, New York, New York 10007 and to the chambers of the undersigned, Room 750, 500 Pearl Street, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Oetken. FAILURE TO OBJECT WITHIN TEN (10) DAYS **WILL** RESULT IN A WAIVER OF OBJECTIONS AND **WILL** PRECLUDE APPELLATE REVIEW. Thomas v. Arn, 474 U.S. 140 (1985); United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997); I.U.E. AFL-CIO Pension Fund v. Hermann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair Ltd., 838 F.2d 55, 58 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 & n.2 (2d Cir. 1983).

Dated: New York, New York
March 11, 2014

Respectfully submitted,


HENRY PITMAN
United States Magistrate Judge

Copies transmitted to:

Mr. Carlos C. Charles
Reg. No. 06574-054
P.O. Box 1000
Otisville, New York 10963

Andrew E. Krause, Esq.
Assistant United States Attorney
United States Attorney's Office
3rd Floor
86 Chambers Street
New York, New York 10007